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In the United States Patent and Trademark Office

In re the Application of:

Leland James Wieschuegel)	
Serial Number: 09/821,106)	Group: 3624
Docket Number: AUS920010174US1)	Examiner: James M. Alpert
Filed on: 03/29/2001)	
For: "User-specified Time-based Proxy)	
Firing in Online Auctions")	

APPEAL BRIEF

Real Party in Interest per 37 CFR §41.37(c)(1)(i)

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)

The present patent application is related to US Patent Application number 09/714,726, docket number AUS9-2000-0736-US1. No decision from a court or the Board has been rendered in this related appeal.

Status of Claims per 37 CFR §41.37(c)(1)(iii)

Claims 1 - 4, 6 - 9, and 11 - 14 are finally rejected, the rejections of which are appealed.

Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)

The claims were amended on 8/30/2006 in order to remove issues prior to appeal.

Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)

The present invention provides an automated function for a bidder in an electronic or online auction to have the function automatically places bids on behalf of the user, with the bids being paced by a delay factor so as to avoid runaway counterbidding between two automated proxy agents, and so as to avoid the appearance of the bids being placed automatically by observers and other bidders of the auction. To accomplish this, the automatic bidding proxy agent monitors current bid levels, and places bids to "best" or "beat" a current bid level, so long as the bid is within constraints configured by the user. The bid, however, is placed only after a pre-determined delay from the current bid being posted in the auction.

Claim 1 sets forth a method to accomplish these objectives by:

- (a) providing a bid parameter set having a plurality of proxy bid parameters (Fig. 3 #34; pg. 16 lines 12 - 17; Fig. 4 #42; pg. 18 lines 10 - 17; pg. 19 lines 10 - 17; pg. 21 line 16 - pg. 22 line 2), said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters includes a counter bid delay (Fig. 3 #34 "pace"; pg. 17 line 8 "delay pace");
- (b) checking at least one current bid level in a bid data store of an offering or auction system (pg. 17 lines 16 - 18; pg. 18 lines 3 - 8);
- (c) determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed (pg. 15 lines 12 - 17; Fig. 4 #44); and
- (d) placing a counter bid into at least one auction responsive to said proxy conditions being met and a time following or upon the elapse of said counter bid delay from a time of placement of said current bid (pg. 15 lines 12 - 17; Fig. 4 #44).

Claim 6 sets forth a device or article of manufacture having:

- (a) a computer readable medium suitable for storage of computer program code, said code being retrievable and executable by a computer (pg. 15 lines 8 - 11); and
- (b) one or more computer program codes (pg. 14 lines 13 - 17) encoded in said

computer readable medium adapted to instruct a computer to perform the steps of:

providing a bid parameter set having a plurality of proxy bid parameters (Fig. 3 #34; pg. 16 lines 12 - 17; Fig. 4 #42; pg. 18 lines 10 - 17; pg. 19 lines 10 - 17; pg. 21 line 16 - pg. 22 line 2), said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters includes a counter bid delay (Fig. 3 #34 "pace"; pg. 17 line 8 "delay pace");

checking at least one current bid level in a bid data store of an offering or auction system (pg. 17 lines 16 - 18; pg. 18 lines 3 - 8);

determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed (pg. 15 lines 12 - 17; Fig. 4 #44); and

placing a counter bid into at least one auction responsive to said proxy conditions being met and a time following or upon the elapse of said counter bid delay from a time of placement of said current bid (pg. 15 lines 12 - 17; Fig. 4 #44).

Claim 11 sets forth a system for accomplishing these objectives having:

- (a) a proxy bid parameter set (Fig. 3 #34; pg. 16 lines 12 - 17; Fig. 4 #42; pg. 18 lines 10 - 17; pg. 19 lines 10 - 17; pg. 21 line 16 - pg. 22 line 2) disposed in an automated bidding system having a plurality of proxy bid parameters, said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters including a counter bid delay (Fig. 3 #34 "pace"; pg. 17 line 8 "delay pace");
- (b) a current bid level checker operable by said automated bidding system for checking at least one current bid level in said bid data store (pg. 17 lines 16 - 18; pg. 18 lines 3 - 8);
- (c) a proxy condition evaluator operable by said automated bidding system for determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than

the participant for which proxy bidding is being performed (pg. 15 lines 12 - 17; Fig. 4 #44); and

- (d) a counter bid generator operable by said automated bidding system for placing a counter bid into at least one auction responsive to said proxy conditions being met and at a time following or upon the elapse of said counter bid delay from a time of placement of said current bid (pg. 15 lines 12 - 17; Fig. 4 #44).

Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)

Appellants request review by the Board of:

- (a) rejection of Claim 11 under 35 U.S.C. §101;
- (b) rejections of Claims 1 - 4, 6 - 9, and 11 - 14 under 35 U.S.C. §112, second paragraph;
- (c) rejections of Claims 1 - 4, 6 - 9, and 11 - 14 under 35 U.S.C. §112, first paragraph; and
- (d) rejections of Claims 1 - 4, 6 - 9, and 11 - 14 under 35 U.S.C. §103 over U.S. published patent application 2002/0038282 to Montgomery (hereinafter "Montgomery"), in view of U.S. Patent 6,415,269 to Dinwoodie (hereinafter "Dinwoodie"), in further view of U.S. published patent application 2003/0083983 to Fisher (hereinafter "Fisher").

Arguments per 37 CFR §41.37(c)(1)(vii)**Rejection of Claim 11 under 35 U.S.C. §101**

In the Office Action, claim 11 has been rejected under 35 U.S.C. §101 for potentially reading upon a human "proxy agent" who are well known to participate in auctions in the behalf of other humans. It was argued that since the recited term "proxy agent" could read upon a human, the claim was drawn to non-statutory matter.

- (1) After careful review of this term, even though the inventors are allowed to be their own lexicographer, Appellants also considered the traditional definitions of the words "proxy" and "agent" separately (emphasis added):

proxy *n.*

1. **A person** authorized to act for another; **an agent** or substitute.
2. **The authority** to act for another.
3. The written authorization to act in place of another.

(Source: Dictionary.com. The American Heritage® Dictionary of the English Language, Fourth Edition, Houghton Mifflin Company, 2004.

<http://dictionary.reference.com/search?q=proxy&x=0&y=0>, accessed: August 30, 2006).

As such, a "proxy" is a noun, and may be a person (e.g. a human agent), or may be the *authorization* to act for another. Similarly, Appellants have reconsidered the definition of the term "agent" as applied to the information technology arts :

agent <networking> In the client-server model, the part of the system that performs information preparation and exchange on behalf of a client or server. Especially in the phrase "intelligent agent" it implies some kind of automatic process which can communicate with other agents to perform some collective task on behalf of one or more humans. (Source: *The Free On-line Dictionary of Computing*, Denis Howe.
<http://dictionary.reference.com/search?q=agent&x=0&y=0>, accessed: August 30, 2006)

So, the word "proxy" is a noun, not an adjective, and when afforded the human-related meaning, it is synonymous with the nouns "agent" or "substitute" person. In the meaning proposed by the examiner, the claim term "proxy agent" would be redundant noun-noun, meaning "agent agent" or "substitute agent", or even "proxy proxy".

However, when the term "agent" is afforded its computing, networking and information technology definition, the claim term "proxy agent" is then reasonably interpreted as "proxy part of the system that performs information preparation and exchange on behalf of a client or server", or in other words "a computer-based process which is authorized to act on behalf of a client computer or server computer".

These latter interpretations are consistent with Appellants' disclosure. The former interpretation as a person is not only grammatically incorrect due to redundancy, but also is inconsistent with the specification.

(2) In order for Claim 11 to "read upon" a human auction proxy, that human would have to "comprise" the elements listed in the body of a claim, namely (a) a proxy bid parameter, (b) a current bid level checker, (c) a proxy condition evaluator, and (d) a counter bid generator. Supposedly these items could be mental processes and mentally remembered values, except that the claim has been amended to specify that the parameter is "disposed in an automated bidding system", and that the other elements are "operable by said automated bidding system". The examiner has characterized these amendments

as "minor" in his rationale in the Office Action, but in effect these phrases require that for a human to be covered by this claim, he or she would have to have disposed within him or her an automated bidding system. Further, his or her mental processes would have to be "operable" by that automated bidding system disposed within him or her.

While some technological systems are "disposable" inside of humans, such as heart pace makers, there is no evidence placed by the examiner in the record of such embedded systems being capable of controlling mental processes of the host human.

Thus, the rejection of claim 11 under §101 is improper by affording meanings to claim terms which are not supported by the specification, the cited art, or ordinary meanings in the relevant art. For these reasons, Appellants request reversal of the rejections of claims 11 - 15 on these grounds.

Rejections under 35 U.S.C. §112, Second Paragraph

In the Office Action, Claims 1 - 4, 6 - 9, and 11 - 14 were rejected under 35 U.S.C. §112, second paragraph, applying rationale organized into four arguments. Appellants adopt this structure, and reply to the arguments in the same order.

Argument 1 regarding number of proxy parameters recited in the claims: Appellants have responded by amending the claims to recite a "plurality of proxy parameters", and thus this issue is removed from Appeal.

Argument 2 regarding requirement to recite in the claims a "maximum bid" or "termination level" parameter: In the Office Action, the examiner has attempted to require that a maximum bid or termination level parameter be recited in the claims reasoning that it is inherently present and well-known. While the disclosure is required to describe an operable embodiment of the invention, the claims are not required to claim portions of the embodiment which are well known in the art.

Claiming well-known aspects of an embodiment which do not serve to patentably distinguish the claims from the cited art is often referred to as "overclaiming". The examiner has noted that such as "maximum bid" parameter is well known in the art. Such inclusion of well known elements in claims, when not otherwise related to distinguishing aspects of the claimed invention, has been discouraged by the courts by holding such "overclaimed" claims invalid (*Holstensson v. V.M. Corp.*, 129 U.S.P.Q., 401 (6th Cir. 1963), *cert. denied*, 377 U.S. 966

(1964)). In regard to whether or not well-known elements should be included in the body of a claim, Rule 1.75(e)(3) also provides that only those elements which constitute new or improved portions should be recited. For these reasons, these rejections should be reversed.

Argument 3 regarding confusing term "current bid level": In the Office Action, it was held that the term "current bid level" is confusing, and change to "current leading bid level" or "currently winning bid level" was required. The term "current bid level" is clearly described in the disclosure (paras. [0012] - [0014], [0051]). The term encompasses all auction systems in which a "bid to beat" is posted for bidders to know and counterbid.

This more general term encompasses not only *highest* bid level or *winning* bid level, but other current bid levels in other types of auctions. For example, in some business-to-business auctions, a quantity of a product will be offered to distributors to purchase. Each distributor may bid both price and quantity, up to the total quantity of products available. In such a case, the "winning" bid may not necessarily be the "highest" bid, but may be a lower price with the greatest quantity, or may be the bid which is the greatest when measured by multiplying the bid price by the bid quantity.

Consider also that in some automated auction processes, bid history is not shown or available to the bidding agents. For example, on eBay, only a current bid level is shown in many of the auctions. It is not clear whether or not other, *higher* bids were submitted but rejected, and it is irrelevant since the current bid level is the bid to beat (e.g. the bid to overcome).

Therefore, requiring "current bid level" to be amended to "leading" bid level would be unclear, as it presumes understanding of the bid selection rules which are not necessarily known by the bidders. Likewise, requiring "current bid level" to be amended to "winning" bid level would be unclear, as it presumes understanding of the bid selection rules which are not necessarily known by the bidders.

For these reasons, "current bid level" is sufficiently clear as required by 35 U.S.C. §112, second paragraph, and these rejections should be reversed.

Argument 4 regarding redundant limitation recitation: In the Office Action, it was held that considering the counter bid delay in the last step or element of the claims was redundant with it being considered in the step or element which evaluates the counter bid conditions. The rationale that "if a counter bid delay is a parameter that is established in the parameter set, then placing a counter bid responsive to the proxy conditions would automatically include a time

delay" is circular reasoning.

The examiner's reasoning perhaps would not be circular and possibly would be supportive of a rejection if the claims specified that *all* of the bidding conditions in the parameter set must be met before a counter bid was placed, because "all" would include the delay parameter. But, the claims do not specify *all* conditions must be met. Instead, the claims specify "determining if *any* of said proxy conditions have been met", which is not necessarily inclusive of the delay parameter. Examples provided in the disclosure allow for counter bidding upon several, distinctly separate conditions which may occur.

There is no redundancy in the final step or element of the claims in which the time delay is specifically considered, as such. For these reasons, the burden by the examiner for supporting these rejections has not been met, and these rejections should be reversed.

Rejections under 35 U.S.C. §112, First Paragraph

In the Office Action, Claims 1 - 4, 6 - 9, and 11 - 14 were rejected under 35 U.S.C. §112, first paragraph, as failing to be supported by an enabling disclosure with respect to the element, step, or limitation of "current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed".

In paragraph [0013], a related and incorporated patent application is described in which a proxy agent "polls the current status of the bid level in a particular offer or auction, and immediately places a bid higher than the highest **competitive** bid until the proxy maximum has been reached." (emphasis added) According to auction vernacular, and to legal dictionaries, a "competitive bid" is a bid which is made in competition with another, not with oneself.

In paragraph [0025], the invention's bid placing function is described as " . . . automatically increases the bid amount on the bidder's behalf **in response to counter bids** from other bidders, until the proxy value is reached" (emphasis added). Here again, the term "counter bid" is referring to a bid to top bids from others. According to auction vernacular, and to legal dictionaries, a "counter bid" is a bid place to beat, top, or win over another person's bid, not a bid placed to replace or amend one's own bid.

To hold that "competitive bidding" or "counter bidding" does not involve two opposing parties would be improper, and contrary to definitions of "competitive" and "counter". Our claim phrase which stands rejected generally described both counter bidding and competitive

bidding using the common aspect that they are both processes of bidding in response to other bids.

In the rationale for the enablement rejection, the examiner has relied upon the asserted fact that "[t]he examiner has reviewed the disclosure but cannot detect wherein there is specific support for this amendment". This is clearly refuted by the facts shown above regarding paragraphs [0025] and [0013]. As such, a *prima facie* case of non-enablement has not been properly established because evidence shows support in the disclosure exists. Because the initial burden to establish a *prima facie* case of non-enablement is upon the examiner, the Appellants are not required to prove enablement (*In re Dillon*, 919 F.2d 688, 16USPQ2d 1897, 1908 (Fed. Cir. 1990) (en banc) (Newman, J., dissenting), *cert. denied sub nom. Dillon v. Manbeck*, 500 U.S. 904 (1991)).

For these reasons, these rejections should be reversed.

Rejections of Claims under 35 U.S.C. §103 over Montgomery in view of Dinwoodie in further view of Fisher

In the Office Action, Claims 1 - 4, 6 - 9, and 11 - 14 were rejected under 35 U.S.C. §103 over U.S. published patent application 2002/0038282 to Montgomery, in view of U.S. Patent 6,415,269 to Dinwoodie, in further view of **U.S. Patent 6,415,269** to Fisher (emphasis added by Appellants). Please note that there appears to be an error as patent 6,415,269 is redundantly cited, and it is not issued to Fisher. However, a U.S. published patent application 2003/0083983 to Fisher is listed in the Notice of References Cited. For the purposes of this Appeal Brief, Appellants respond to the rejection assuming that it was intended to be over this published patent application to Fisher.

The examiner has stated that he is "slightly conflicted as to whether Montgomery expressly teaches the limitation wherein 'at least one of which parameters includes a counter bid delay' ". The examiner has proposed that perhaps Montgomery's "time-to-close delay" is actually a counter bid delay, and that if that is not a counter bid delay, then Dinwoodie provides an example of a delay in posting or processing a bid is "well known".

Appellants believe the examiner is not saying that a "counter bid delay" is well known, else there would be no need to postulate about the possibilities of Montgomery or Dinwoodie showing such. Rather, Appellants interpret the examiner's remarks to say that either, or both:

(a) Montgomery's "time-to-close" delay *might* be equivalent of a "counter bid delay"; or
(b) Dinwoodie's example of a "delay in posting or processing a bid" is evidence of a well known auction operation, and that such a "delay in posting or processing a bid" perhaps is equivalent to Appellants' "counter bid delay".

It is a requirement that the examiner concretely state the grounds for rejection ("... the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified" per 37 CFR 1.104(c)(2)). Several *possible* facts do not accumulate to a definite fact, and do not form the basis of a proper *prima facie* case of obviousness. Appellants submit that neither Montgomery or Dinwoodie teach or suggest a counter bid delay operation, however.

With respect to Montgomery's "time-to-close" parameter, this is not a "counter bid delay" as Appellants have described and claimed. Montgomery only mentions "time to close" in their paragraphs [0068], [0072], and [0077], which are reproduced below with added emphasis:

[0068] FIG. 5 depicts an exemplary embodiment of a flow diagram 500 illustrating a MyBid portfolio that can provide a centralized area where the buyer's active bids can be stored and displayed. The buyer can enter bid automation parameters into each bid's record by, e.g., clicking on the auctioned item's informational record, or updating the information directly on the portfolio summary page. The buyer can also edit and modify parameters on active bids by increasing or decreasing maximum bids, **time to close activation** and other bid or item related parameters. The buyer can also delete items in the portfolio regardless of whether bids have already been placed or not.

[0072] FIG. 7 depicts an exemplary embodiment of a flow diagram 700 illustrating a bid engine component that can include bid automation business process logic that can manage the agent and proxy functionality. The bid engine can scan the active bids for all buyers and can determine which bids are ready to execute based on their **time to close activation parameter**. The bid engine can then scan the targeted auction site to determine the current high bid and bidder. If the bidder is not the buyer, then the bid engine can prepare a bid based on computing the minimum incremental amount plus the current bid. If the computed bid is below the maximum bid parameter set by the buyer, then the engine can turn over the bid to the fastscan bid engine for processing. The bid engine can retrieve the Site Characterization information so that the fastscan bid engine can know how to navigate the site in order to execute the bid on behalf of the buyer. The bid engine can also retrieve all relevant buyer information for this account so that the proxied bid can be entered under the account of the buyer.

[0077] FIG. 9 depicts an exemplary embodiment of a flow diagram 900 illustrating a bid agent component that can perform the actual bidding on behalf of the buyer/bidder. The bid agent software can use information contained in the site characterization to emulate the interaction of the buyer/bidder. The bid agent can use the buyer's personal account information for the targeted auction site to authenticate, place and confirm bids that are automatically entered by the bid agent for the targeted auction. The bid agent can also use information contained in the auction site characterization data set to determine how to programmatically navigate the pages of the site, identify which information is expected to confirm receipt of the correct page and what information needs to be input for each page. The internal state machine can progress through each state as the bid is entered and any exception conditions can be logged and handled at each of these states. The design of the bid agent can also support distribution of a bid object to another server (see proxied peer-to-peer distributed server bid engine described further below with reference to FIG. 10) as a means of responding to an IP Block countermeasure and can also facilitate traffic management by load balancing the activated bid objects across a collection of federated or clustered servers. Bid agent can provide a counter-measure detection capability that can interpret specific kinds of response codes/pages and can then take actions to complete the bids through one of several alternatives such as, e.g., **Time to Close Delay rescheduling** and proxied server bid engine (see FIG. 10 below) responses.

There appears to be no other explanation of their meaning of "time to close" in the disclosure, except that it is described as a "window" in Figure 7 (item 708). Claim 4, however, sheds some light on their meaning (emphasis added by Appellants):

. . . wherein said TACW spans a range of time beginning at a time calculated by subtracting an absolute time to start proxied bidding **from an auction end time**, and **ending with a time of the auction end time**, wherein the TACW defines a period of time when a scan agent and a bid proxy work in tandem to place as many bids as necessary to win an auction;

As such, their "time to close" is literally just that – the time left in the auction from now until the close or end of the auction. It is measured not from the last bid placed, as Appellants "delay to counter bid" is defined, but instead is measured from now until the end of the auction. Thus, Montgomery's "time to close" delay or window is not the same as a "counterbid delay" as Appellants have claimed and described.

Regarding Dinwoodie as evidence of Appellants' counter bid delay being well known,

specifically as cited at col. 6, lines 4 - 7 of Dinwoodie, this is not a recitation of a counter bid delay for *placing* bids at all. Instead, Dinwoodie is teaching a delay in *accepting* new bids, not for *placing* new bids.

Dinwoodie's acceptance delay prevents the auction system from being "overrun" by not accepting any new bids for a period of time after a new highest bid has been received. This paces the auction system's acceptance and update rate, not the bidder's bid placing rate.

Appellants have claimed "*placing* a counter bid into at least one auction responsive to said proxy conditions being met and a time following or upon the elapse of said counter bid delay from a time of placement of said current bid." While placing a bid is synonymous with submitting a bid (e.g. an action performed by the bidder not the auctioneer), this is the opposite of accepting or receiving a bid (e.g. an action performed by auctioneer not the bidder).

Fisher was not relied upon for teaching this aspect of Appellants' claims.

For these reasons, Montgomery in view of Dinwoodie in further view of Fisher fails to teach all of the claimed elements, steps, and limitations, and therefore these rejections should be reversed.

For these reasons, Appellants request reversal of all rejections and allowance of all claims.

Respectfully,

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Claims Appendix
per 37 CFR §41.37(c)(1)(viii)

Clean Form of Amended Claims

Claim 1 (previously presented):

A method for bidding by proxy in an automated offering or auctioning system on behalf of a bidder or participant, comprising the steps of:

providing a bid parameter set having a plurality of proxy bid parameters, said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters includes a counter bid delay;

checking at least one current bid level in a bid data store of an offering or auction system;

determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed; and

placing a counter bid into at least one auction responsive to said proxy conditions being met and a time following or upon the elapse of said counter bid delay from a time of placement of said current bid.

Claim 2 (original):

The method as set forth in Claim 1 wherein said step of determining if any proxy conditions have been met comprises determining if said current bid level is below an indicated bid maximum parameter in said proxy bid parameters.

Claim 3 (original):

The method as set forth in Claim 2 wherein said step of determining if said current bid level is below an indicated bid maximum parameter further comprises determining if a specified time during an auction open period has not been reached yet such that a specified maximum bid may be placed before such specified time.

Claim 4 (original):

The method as set forth in Claim 2 wherein said step of determining if said current bid level is below an indicated bid maximum parameter further comprises determining if a specified time prior to an auction close time has been reached such that a specified maximum bid may be placed after such specified time.

Claim 5 (canceled).

Claim 6 (previously presented):

A computer-readable medium comprising:

a computer readable medium suitable for storage of computer program code, said code being retrievable and executable by a computer; and

one or more computer program codes encoded in said computer readable medium adapted to instruct a computer to perform the steps of:

providing a bid parameter set having a plurality of proxy bid parameters, said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters includes a counter bid delay;

checking at least one current bid level in a bid data store of an offering or auction system;

determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed; and

placing a counter bid into at least one auction responsive to said proxy conditions being met and at a time following or upon the elapse of said counter bid delay from a time of placement of said current bid.

Claim 7 (original):

The computer-readable medium as set forth in Claim 6 wherein said program code for determining if any proxy conditions have been met comprises program code for determining if said current bid level is below an indicated bid maximum parameter in said proxy bid parameters.

Claim 8 (original):

The computer-readable medium as set forth in Claim 7 wherein said program code for determining if said current bid level is below an indicated bid maximum parameter further comprises program code for determining if a specified time during an auction open period has not been reached yet such that a specified maximum bid may be placed before such specified time.

Claim 9 (original):

The computer-readable medium as set forth in Claim 7 wherein said program code for determining if said current bid level is below an indicated bid maximum parameter further comprises program code for determining if a specified time prior to an auction close time has been reached such that a specified maximum bid may be placed after such specified time.

Claim 10 (canceled).

Claim 11 (previously presented):

A proxy agent for an automated bidding system, said bidding systems having a bid data store containing current bid level information for one or more auctions or offerings, said proxy agent comprising:

a proxy bid parameter set disposed in an automated bidding system having a plurality of proxy bid parameters, said proxy bid parameters indicating proxy conditions for at least one offering or auction to which proxy bidding is to be made, at least one of which parameters including a counter bid delay;

a current bid level checker operable by said automated bidding system for checking at least one current bid level in said bid data store;

a proxy condition evaluator operable by said automated bidding system for determining if any of said proxy conditions have been met including that said current bid level reflects a current bid placed by an auction participant other than the participant for which proxy bidding is being performed; and

a counter bid generator operable by said automated bidding system for placing a counter bid into at least one auction responsive to said proxy conditions being met and at a time following or upon the elapse of said counter bid delay from a time of placement of said current bid.

Claim 12 (original):

The proxy agent as set forth in Claim 11 wherein said proxy condition evaluator is adapted to determine if said current bid level is below an indicated bid maximum parameter in said proxy bid parameters.

Claim 13 (original):

The proxy agent as set forth in Claim 12 wherein said proxy condition evaluator is adapted to determine if a specified time during an auction open period has not been reached yet such that a specified maximum bid may be placed before such specified time.

Claim 14 (original):

The proxy agent as set forth in Claim 12 wherein said proxy condition evaluator is adapted to determine if a specified time prior to an auction close time has been reached such that a specified maximum bid may be placed after such specified time.

Claim 15 (canceled).

Evidence Appendix
per 37 CFR §41.37(c)(1)(ix)

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

Related Proceedings Appendix***per 37 CFR §41.37(c)(1)(x)***

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).